IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 16 OF 1998

Jagannath Baburao Swamy Petitioner

Vs.

Smt.Ramakka Munnuswamy & anr. Respondents

Mr. Kasim Shaikh h/f. Mrs. Anita Agarwal for petitioner.

Mr.S.B.Deshmukh h/f. Mr.A.V.Anturkar for Resp.No.2.

CORAM: B.H.MARLAPALLE,J.
June 20, 2005.

ORAL JUDGMENT:

1. The order passed by the Competent Authority under the Bombay Rent Act on 12/9/1997 is under challenge in this Civil Revision Application. The present petitioner had filed an application against the respondents under Section 13-A2 of the Bombay Rent Act and sought the eviction of the respondents. By the impugned order the application came to be allowed partly as is clear from the following operative part of the said order:

"The application is allowed so far as opponent no.1 is concerned, Opponent no.1 shall deliver

the possession of the premises in dispute to the applicant who is entitled to it. However, the present application stands dismissed as against opponent no.2. Parties shall bear their own costs."

2. Admittedly when the application was allowed by the impugned order, it was the opponent no.2 who was in possession of the suit premises which is a room admeasuring about 18’ x 9’ together with open space of about 9’ x 9’situated in front of the said room on the land bearing CTS No.153 (Gaothan) Bopodi, Pune. The trial Court while granting the above relief held that the application was not maintainable against opponent no.2 and the Competent Authority did not have jurisdiction to entertain and try the said application against opponent no.2. It further held that there was no relationship of licensor and licensee between the applicant and the opponents.

3. As per the applicant opponent no.1 was inducted as a licensee in the suit premises on her agreeing to pay Rs.250/- per month as licence fees. Accordingly an agreement of leave and licence was

executed on or about 31-3-1993. The premises were given to opponent no.1 for the purpose of her residence and the licence was to expire after eleven months i.e. on 28-2-1994. As the opponent no.1 did not vacate and deliver peaceful possession of the premises after the expiry of the licence period the application came to be filed seeking eviction of both the opponents by further alleging that the opponent no.1 had illegally handed over the possession to opponent no.2 whose possession was unauthorised. Initially the application was allowed on 18-2-1995 as none of the opponents had appears to contest the same. Civil Revision Application No.717 of 1995 came to be filed before this Court challenging the order dated 18-2-1995. The Revision Application was allowed and the case was remanded to the competent authority for fresh trial. On receipt of the notice from the Competent Authority the opponents appeared and opponent no.1 filed an affidavit but did not file any say. Opponent no.2 filed his say at Exhibit 17 and submitted that he was a licensee in the premises and the provisions of Section 13-A2 of the Bombay Rent Act were not applicable. He thus challenged the jurisdiction of the competent authority to try and decide the application. It was contended by the

opponent no.2 that he was occupying the premises since 1989 as the tenant directly inducted by the applicant. The trial Court assessed the evidence adduced by both the parties and allowed the application partly. The relief granted to the applicant is an illusion and the applicant is not able to obtain peaceful and vacant possession of the suit premises from opponent no.2 as the decree passed is only against opponent no.1 who has disappeared from the scene.

4. As far as opponent no.1 is concerned the period of the agreement of leave and licence dated 31-3-1993 had expired on 28-2-1994 and the application came to be moved before the competent authority on 6-12-1994. The opponent no.1, as per the learned counsel for the applicant, had in fact filed written statement at Exhibit 16 and stated that she had allowed opponent no.2 to use and occupy the said premises thereafter as she was to go to her native place and the opponent no.2 was occupying the said premises at all times. She also contended that the licence fees was paid by her upto 28-2-1994. However, the opponent no.1 did not step in the witness box and, therefore, the issue as to whether

opponent no.1 was paying her licence fees or rental consideration could not be ascertained.

5. Even in the depositions of the applicant, no light has been thrown on this issue, beyond merely saying that opponent no.2 was in unauthorised occupation of the suit premises and was inducted by opponent no.1. Even the opponent no.2 in his deposition before the competent authority emphasised that he was the tenant inducted by the applicant himself but kept mum on the issue of licence fees or rent. Under these circumstances, it is evident that the status of the respondent no.2 could not be adjudicated upon precisely. Section 5 (4A) of the Bombay Rent Act defines the terms "licensee" as follows:

> " "licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and included any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor, or a person having any accommodation for rendering

> or carrying on medical or para-medical services or activities in or near a nursing home, hospital or sanatorium, or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanitorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of the exigencies of service or provision of a residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increases for such premises, and any additional sum for services supplied with such premises, or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly."

6. To ascertain the status of a person being licensee it is necessary to establish the occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge and it also includes any person in such occupation of any premises or any part thereof in a building vesting in or leased to a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960. The adjudication on the status of opponent no.2 as a

licensee or otherwise thus remained incomplete on account of lack of evidence. Though the Opponent No.1 in her written statement claimed that she had inducted opponent no.2, her written statement being silent on the payment of licence fees, the same could have been brought out only through her oral depositions in case she had stepped into the witness box. In the absence of the oral evidence of opponent no.1, the depositions of the applicant and opponent no.2 are words against words. The oral evidence of opponent no.1 was thus of vital importance to decide the controversy regarding the status of opponent no.2 and what has been decided in the impugned order is a half-hearted exercise on the adjudication of application moved by the applicant. It is submitted across the bar that opponent no.1 is presently residing at Pune and it is possible for the competent authority to issue summons and record her oral depositions including the liberty to any of the parties to call for documentary evidence that may be in her possession. By the impugned order there is no finality to the application submitted by the applicant and the impugned order is unexecutable.

7. In the result this application succeeds

partly. The impugned order dated 12-9-1997 is hereby quashed and set aside and Application No.48 of 1994 is hereby remanded to the competent authority with a direction to issue witness summons to opponent no.1 - Smt. Ramakka Munnuswamy so as to record her evidence and decide the application afresh on its own merits. It shall be done as expeditiously as possible and preferably within a period of six months from the receipt of writ of this Court.

8. Rule made absolute accordingly with no order as to costs.

9. Writ to go forthwith.

10. Certified copy is expedited.

(B.H.MARLAPALLE,J.)